HIGH COURT OF CHHATTISGARH, BILASPUR

(DIVISION BENCH)

CORAM: **HON'BLE SHRI JAGDISH BHALLA, ACTING C.J. &**
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

Writ Appeal No.115 of 2007

WRIT APPEAL UNDER SECTION 2 OF CHHATTISGARH HIGH COURT (APPEAL TO DIVISION BENCH) ACT, 2006

APPELLANT RESPONDENT NO.4	:	K. Umashankar Rao, S/o K. Krishnamurti, aged about 40 years, Assistant Teacher, Pravas-Andhra Pathshala, Camp No.1, Bhilai Nagar, District Durg. (C.G.)
		-Versus-
RESPONDENTS RESPONDENT NO.1	: 1.	Pravas-Andhra Pathshala Committee, through its Chairman, Bhilai Nagar, Camp. No.1, Bhilai, District Durg.
RESPONDENT NO.2	: 2.	Secretary, Pravas-Andhra Pathshala, Bhilai nagar Camp. No.1, Bhilai (Durg).
RESPONDENT No.3	: 3.	Deputy Director Education (School), Durg (C.G.)
RESPONDENT NO.5	: 4.	J. Mohanrao, S/o J. Sardhe, Asstt. Teacher, Pravas-Andhra Pathshala, Camp. No.1, Bhilai, District Durg.
Petitioner No.1	: 5.	A. Satyarao, aged about 45 years, S/o A. Satyanarayan, working as Asstt. Teacher, Camp No.1 Bhilai Nagar, District Durg, Chhattisgarh.
Petitioner No.2	: 6.	A.K.Laxminarayan, S/o Surya Prakash Rao, aged about 37 years, working as Asstt. Teacher in the High School, Pravas-Andhra Pathshala Camp No.1, Bhilai Nagar, District Durg. (Chhattisgarh)

Present:
Shri Sanjay K. Agrawal, Counsel for the petitioner.
Shri B.R.Ghosh, Counsel for respondents No.1 & 2.
Shri A.S.Kachhawaha, G.A. for the State/respondent No.3
Shri F.S.Khare, Counsel for respondents No. 5 & 6.

ORAL ORDER
(Passed on 19.06.2007)

The following oral order of the Court was passed by **Jagdish Bhalla, Acting C.J.**

This appeal arises out of Judgment dated 25th April 2007 passed by learned Single Judge in W.P.No.4127 of 1992.

The respondents No.5 & 6/writ petitioners challenged the appointment dated 4.11.1992 of the appellant on the post of Assistant Teacher. Notices were issued to the appellant by the Hon'ble Single Judge. However, the appellant chose not to contest before the Hon'ble Single Judge. Therefore, after hearing the counsel for the petitioners and other respondents, the writ petition was allowed.

Aggrieved by the same, the appellant/respondent No.4 filed this writ appeal before the Division Bench of this Court. It has been averred on behalf of the appellant that the impugned order of Hon'ble Single Bench is an *ex parte* order. We are of the considered opinion that it was the appellant who chose not to contest the petition, therefore, it cannot be called as an *ex parte* judgment when the matter was decided after due service to the appellant. We find that the order passed by Hon'ble Single Judge is well reasoned order and point in issue was decided in accordance with law.

We heard the matter. It was brought to our notice that the appellant's father was a member of the Selection Committee. Since the appellant was one of the candidates to the appointment of the Assistant Teacher, in the normal course, his father should have disassociated himself from the selection committee. However, the father of the appellant continued as member of the selection committee who interviewed and recommended selection of the appellant. In such circumstance, the appointment of the appellant on the basis of the recommendation, wherein his father was a member, is in violation of principles of natural justice. The maxim that "justice should not only be done but should be appeared to

have been done" has been violated for the reason that at no stretch of imagination in routine it would be apprehended that the father who is a member of the selection committee and the son was appointed in the process.

We are in agreement with the view taken by the Hon'ble Single Judge with regard to the compliance of Rule 8 of M.P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon ke Bharti) Niyam, 1979 (hereinafter referred to as 'the Rules'). Rule 8 of the Rules is as under:

> "8. (1) Where an Institution desires to fill up any vacancy of a post of a teacher or other employees, it shall make a reference to that effect to the Education Officer, the Divisional Superintendent of Education or the Ayog as the case may be, along with a requisition in Form III.
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> (2) On receipt of a reference under sub-rule (1), the Education Officer, the Divisional Superintendent of education of the Ayog, as the case may be, shall furnish information to the Institution concerned in Form IV and such information shall relate, -
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> (a) Person having more length of continuous service in educational institution shall be given priority over the person having lesser service at his credit;
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> (b) Person who was permanent in service shall have priority over a person who was temporary in service; or
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> (c) Person whose services were terminated earlier shall have priority over a person whose services were terminated later.
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> (3) If no suitable and otherwise qualified teacher or other employee is available, the Education Officer, the

Divisional Superintendent of Education or Ayog, as the case may be shall furnish a non-availability certificate to the Institution concerned."

The writ petitioners were already working as teachers in the aided institution i.e. respondent No.1 before the selection and appointment of the appellant in the said aided institution and according to Rule 8 of the Rules certain rights have been developed in favour of the writ petitioners.

No doubt the appellant has worked as Teacher for almost 15 years but the fact that his father was a member of the selection committee who selected the appellant and the rule 8 of the Rules also cannot be ignored, no interference is warranted in this appeal and we further find that no illegality has been committed by the Hon'ble Single Judge in passing the impugned order. Accordingly, the appeal is dismissed.

Sd/-
Ag. Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge